No. 91-480

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,
Petitioner,

v.

EL CAPITAN DEVELOPMENT COMPANY,
Respondent.

On Petition for Writ of Certiorari to the California Supreme Court

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE OF THE LABORERS HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA; LABORERS VACATION-HOLIDAY TRUST FUND FOR NORTHERN CALIFORNIA; LABORERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA; LABORERS TRAINING AND RETRAINING TRUST FUND FOR NORTHERN CALIFORNIA;

(Additional Amici Listed on Inside Cover)

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CARPENTERS HEALTH AND WELFARE TRUST FUND FOR CALIFORNIA;
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CARPENTERS APPRENTICESHIP AND TRAINING TRUST FUND FOR NORTHERN CALIFORNIA;
CARPENTERS ANNUITY TRUST FUND FOR NORTHERN CALIFORNIA;
CEMENT MASONS HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA;
CEMENT MASONS PENSION TRUST FUND FOR NORTHERN CALIFORNIA;
CEMENT MASONS VACATION TRUST FUND FOR NORTHERN CALIFORNIA;
CEMENT MASONS APPRENTICESHIP AND TRAINING TRUST FUND FOR NORTHERN CALIFORNIA; AND
OPERATING ENGINEERS HEALTH AND WELFARE TRUST FUND;
PENSION TRUST FUND FOR OPERATING ENGINEERS;
PENSIONED OPERATING ENGINEERS HEALTH AND WELFARE FUND;
OPERATING ENGINEERS AND PARTICIPATING EMPLOYERS PRE-APPRENTICESHIP, APPRENTICE AND JOURNEYMEN AFFIRMATIVE ACTION TRAINING FUND;
OPERATING ENGINEERS VACATION AND HOLIDAY PLAN;
OPERATING ENGINEERS CONTRACT ADMINISTRATION TRUST FUND;
OPERATING ENGINEERS MARKET PRESERVATION TRUST FUND;
OPERATING ENGINEERS INDUSTRY STABILIZATION TRUST FUND
IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE IN SUPPORT OF PETITIONER

To the Honorable Chief Justices and Associate Justices of the Supreme Court of the United States:

Pursuant to Rule 36 of the Rules of this Court, the Laborers Health and Welfare Trust Fund for Northern California; Laborers Vacation-Holiday Trust Fund for Northern California; Laborers Pension Trust Fund for Northern California; Laborers Training and Retraining Trust Fund for Northern California; Carpenters Health and Welfare Trust Fund for California; Carpenters Pension Trust Fund for Northern California; Carpenters Vacation and Holiday Trust Fund for Northern California; Carpenters Apprenticeship and Training Trust Fund for Northern California; Carpenters Annuity Trust Fund for Northern California; Cement Masons Health

and Welfare Trust Fund for Northern California; Cement Masons Pension Trust Fund for Northern California; Cement Masons Vacation Trust Fund for Northern California; Cement Masons Apprenticeship and Training Trust Fund for Northern California; and Operating Engineers Health and Welfare Trust Fund; Pension Trust Fund for Operating Engineers; Pensioned Operating Engineers Health and Welfare Fund; Operating Engineers and Participating Employers Pre-Apprenticeship, Apprentice and Journeymen Affirmative Action Training Fund; Operating Engineers Vacation and Holiday Plan; Operating Engineers Contract Administration Trust Fund; Operating Engineers Market Preservation Trust Fund; Operating Engineers Industry Stabilization Trust Fund (collectively hereinafter referred to as "Trust Funds") respectfully move for leave to file the accompanying brief as *amicus curiae* in support of the petition for Writ of Certiorari. Petitioners have consented to the filing of this brief; respondents have not.

INTEREST OF THE TRUST FUNDS

Each of the above-named Trust Funds is an employee benefit plan organized and existing under the laws of the United States. Each Trust Fund is an express trust created by a written trust agreement subject to and pursuant to § 302 of the Labor Management Relations Act, 29 U.S.C. § 186, and a multi-employer employee benefit plan within the meaning of §§ 3 and 4 of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1002-03. The Boards of Trustees of each Trust Fund has the responsibility to collect the contributions owed to the respective plans by construction employers pursuant to collective bargaining agreements covering workers in the building and construction trades.

In discharge of their fiduciary duty under ERISA to "make systematic, reasonable and deliberate efforts to collect delinquent contributions," the Board of Trustees

of each Trust Fund uses all available collection remedies provided under California law, including the recordation, and, if necessary, the foreclosure of mechanics' liens under Civil Code § 3111.

Mechanics' liens provide a primary remedial tool to the Trust Funds which is especially important in today's economic climate. The Board of Trustees of these Funds are understandably concerned with the holding of the California Supreme Court in this case that this remedy —the foreclosure of mechanics' liens—is preempted by ERISA. Therefore, the Trust Funds urge this Court to issue a Writ of Certiorari. Refusal of this Court to review the judgment below will have a broad and adverse impact upon the fiscal soundness of construction employee benefit plans and consequently upon the plans' ability to provide benefits to the workers.

ISSUES DEVELOPED BY THE TRUST FUNDS

The Trust Funds' brief focuses on issues which it considers not adequately presented to this Court, including:

(a) the particularly adverse impact that the decision below will have on the ability of the Boards of Trustees of multi-employer plans to adequately satisfy their obligation to protect fund assets, and as a result, distribute plan benefits;

(b) the fundamental conflict between the decision of the court below and the decisions of this Court, and

(c) the fundamental conflict between the decision of the court below and the legislative history and purposes of ERISA.

The Trust Funds, therefore, move for leave to file the accompanying brief *amici curiae*.

Respectfully submitted,

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BRIEF AMICI CURIAE OF THE LABORERS HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA; LABORERS VACATION-HOLIDAY TRUST FUND FOR NORTHERN CALIFORNIA; LABORERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA; LABORERS TRAINING AND RETRAINING TRUST FUND FOR NORTHERN CALIFORNIA; CARPENTERS HEALTH AND WELFARE TRUST FUND FOR CALIFORNIA; CARPENTERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA; CARPENTERS VACATION AND HOLIDAY TRUST FUND FOR NORTHERN CALIFORNIA; CARPENTERS APPRENTICESHIP AND TRAINING TRUST FUND FOR NORTHERN CALIFORNIA; CARPENTERS ANNUITY TRUST FUND FOR NORTHERN CALIFORNIA;

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OPERATING ENGINEERS INDUSTRY STABILIZATION TRUST FUND
IN SUPPORT OF PETITIONER

The Trust Funds submit this brief as amici curiae to urge the Court to review the holding below that the mechanics' lien provisions contained in the California Civil Code are preempted by § 514(a) of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1144.

INTEREST OF THE TRUST FUNDS

Each of the above-named Trust Funds is an employee benefit plan organized and existing under the laws of the United States. Each Trust Fund is an express trust created by a written trust agreement subject to and pursuant to § 302 of the Labor Management Relations Act,

29 U.S.C. § 186, and a multi-employer employee benefit plan within the meaning of §§ 3 and 4 of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1002-03. The Boards of Trustees of each Trust Fund has the responsibility to collect the contributions owed to the respective plans by construction employers pursuant to collective bargaining agreements covering workers in the building and construction trades.

During the three-year period ending August, 1991, the Carpenters Trust Funds collectively received over $596,000,000 in contributions from approximately 1,800 employers. During the five-year period ending September, 1991, the Laborers Trust Funds collectively received over $574,100,000 in contributions from approximately 1,546 employers. During the five-year period ending September, 1991, the Cement Masons Trust Funds collectively received over $91,300,000 in contributions from approximately 500 employers. During the five-year period ending December, 1990, the Operating Engineers Trust Funds collectively received over $87,190,000 in contributions from approximately 2,200 employers.

Each Trust Fund is confronted with employers who are delinquent in meeting their contractual obligations. The Carpenters Trust Funds list approximately 350 delinquent employers with shortages aggregating more than $24,000,000 during the most recent three-year period. The Laborers Trust Funds list approximately 237 delinquent employers with shortages aggregating more than $959,500 during the most recent five-year period. The Cement Masons Trust Funds list approximately 64 delinquent employers with shortages aggregating more than $218,000 during the most recent five-year period. The Operating Engineers Trust Funds list approximately 785 delinquent employers with shortages aggregating more than $4,077,000 during the most recent five-year period.

In discharge of their fiduciary duty under ERISA to "make systematic, reasonable and deliberate efforts to

collect delinquent contributions," the Board of Trustees of each Trust Fund uses all available collection remedies provided under California law, including the recordation, and, if necessary, the foreclosure of mechanics' liens.

Each Trust Fund utilizes other remedies provided by California law, such as actions on bonds filed by contractors pursuant to § 7071.6, *et seq.* of the Business and Professions Code to pursue, among other things, the payment of fringe benefits for the contractors' employees; actions under § 3172 of the Civil Code to enforce rights arising from stop notices and bonded stop notices for private works of improvement; actions under Civil Code § 3210 to enforce rights arising from stop notices for public works; and actions under Civil Code § 3249 against sureties on payment bonds on public works.

The use of these state law remedies is essential to the proper and effective performance of the collection duties of the Trust Funds. The Board of Trustees of these Funds are understandably concerned with the holding of the California Supreme Court in this case that one of the remedies, the foreclosure of mechanics' liens, is preempted by ERISA. The rationale of the California Supreme Court in arriving at its decision applies to most, if not all, of the remedies enumerated above. If this holding were affirmed, the Trust Funds would be denied essential remedies necessary to the exercise of the Trustees' fiduciary duties required by ERISA.

Mechanics' liens provide a primary remedial tool to the Trust Funds which is especially important in today's economic climate. Therefore, the Trust Funds urge this Court to issue a Writ of Certiorari. Refusal of this Court to review the judgment below will have a broad and adverse impact upon the fiscal soundness of construction employee benefit plans and consequently upon the plans' ability to provide benefits to the workers.

SUMMARY OF ARGUMENT

A. California law provides a comprehensive statutory system intended to ensure that those persons who provide labor or materials to the improvement of real property are properly compensated for their contribution. California Civil Code § 3111 was designed to assure that construction workers' employee benefit plans, which are empowered to preserve and protect the fringe benefit portion of the workers' total compensation package, have equal access to the mechanics' lien remedial scheme. It is apparent that § 3111, by its terms, seeks to treat employee benefit plans in a manner similar to other mechanics' lien claimants.

The California Supreme Court held that § 3111 is preempted because it "relates to" ERISA regulated employee benefit plans "by creating an additional funding mechanism for ERISA plans not provided for by Congress." *Carpenters Southern California Administrative Corporation v. El Capitan Development Co.*, 52 Cal.3d 1041, 1051 (1991). The Trust Funds submit that it is the state law established by the decision below, striking down § 3111, which controverts ERISA rather than § 3111 itself.

In *Mackey v. Lanier Collections Agency*, 486 U.S. 825 (1988), this Court held that a state law which singles out ERISA employee benefit plans for different treatment is preempted under ERISA § 514(a). The effect of the decision below is to deny mechanics' lien remedies to employee benefit plans, while permitting such remedies to non-ERISA plans and other lien claimants. This decision constitutes the "different treatment" rejected in *Mackey*, and therefore the decision itself is preempted by ERISA.

B. The decision below has held § 3111 preempted by ERISA because, it is asserted, this statute "relates to" ERISA plans. *El Capitan*, at 1048. The primary ra-

tionale offered for this conclusion states that § 3111 "relates to" ERISA because it creates an additional cause of action for enforcing contribution obligations, as well as making an additional entity liable for such sums. *Id.*

The Trust Funds contend that this analysis disregards the nature of § 3111 and relevant precedents of this Court. Rather than creating a new substantive cause of action, § 3111 creates a security interest in the real property which is benefited by the labor contributed. California Civil Code § 3110. Section 3111 simply provides a collection remedy against the property, and rights arising thereunder, only when the employer fails to perform its obligation.

Section 3111, by its terms and impact, does not "relate to" employee benefit plans in a manner which has been considered a basis for preemption under the decisions of this Court. This statute has no perceptible impact on plan administration, operations, funding, or distributions of benefits and fails to raise concerns between plan compliance and conflicting law. In essence, § 3111 does not implicate the legal relationships with which ERISA is concerned, which are the relationships between the plan, fiduciaries, employers, and participants. For these reasons, the Court below has erred by holding § 3111 preempted by ERISA.

C. The legislative history of ERISA and its amendments provide clear support that state remedies for the collection of delinquent benefit plan contributions were both contemplated and encouraged by Congress. Relying on its sweeping interpretation of ERISA's preemption provision, the Court below failed to consider the significance of these authorities.

ARGUMENT

I. THE DECISION BELOW IMPERMISSIBLY SINGLES OUT EMPLOYEE BENEFIT PLANS FOR DIFFERENT TREATMENT UNDER CALIFORNIA MECHANICS' LIEN PROVISIONS.

California provides a comprehensive statutory scheme designed to ensure that those who provide labor or materials to the improvement of real property are compensated for their contribution. The following statutes identify persons protected under California mechanics' lien law.

> Mechanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers . . . and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services . . . to a work of improvement shall have a lien upon the property upon which they have bestowed labor or furnished materials or appliances or leased equipment for the value of such labor done or materials furnished. . . .
>
> California Civil Code § 3110.
>
> For the purposes of this chapter, an express trust fund established pursuant to a collective bargaining agreement to which payments are required to be made on account of fringe benefits supplemental to a wage agreement for the benefit of a claimant on particular real property shall have a lien on such property in the amount of the supplemental fringe benefit payments owing to it pursuant to the collective bargaining agreement.
>
> California Civil Code § 3111.

In recognition of the fact that fringe benefit payments represent an important and substantial portion of construction workers' total wage package, the predecessor of Civil Code § 3111 was amended in 1965. The purpose of this amendment was to assure that Trust Funds would be guaranteed an efficient mechanism to enforce the rights

of their beneficiaries, *i.e.*, the workers' lien rights for amounts owing as fringe benefit contributions. Section 3111 did not create a new right; it simply broadened the category of those persons eligible to assert the lien rights already established by § 3110—rights which have been guaranteed under California law since 1872. The Trust Funds, on behalf of their beneficiaries, rely on the mechanics' lien remedy as an important tool in securing the contributions which fund the benefits due.[1] As a result of the decision below, ERISA trust funds are prevented from asserting workers' lien rights arising from unpaid contributions due and owing to the funds. The Trust Funds submit that the decision below singles out ERISA-employee benefit plans for disparate treatment under the State's mechanics' lien provisions and, therefore, the decision itself and the ruling created thereby is preempted under ERISA § 514(a) and § 514(c).

In *Mackey v. Lanier Collections Agency*, 486 U.S. 825 (1988), this Court considered the impact of ERISA's preemption provision on Georgia's garnishment statute. In *Mackey*, this Court considered whether ERISA preempted a related Georgia statute which barred the garnishment of funds or benefits of ERISA-regulated employee benefit plans. In *Mackey*, a collection agency obtained money judgments against participants of a vacation and holiday benefits plan for money owed to clients of the collection agency. The agency brought an action

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[1] Notably, ERISA, as interpreted by this Court, requires that benefits must be provided by the trust funds to the beneficiaries even if the contributions cannot be collected by the trust fund. See, *Central States Pension Fund v. Central Transport, Inc.*, 472 U.S. 559, 567 n.7, 579 n.20 (1985); *see also*, Department of Labor Advisory Op. No. 76-89 (Aug. 31, 1976) and Department of Labor Advisory Op. No. 78-28A (Dec. 5, 1978). The decision of the court below, on the other hand, prevents the collection of the monies necessary to provide the very benefits mandated by this Court, thereby placing the financial integrity of these employee benefit trust funds in jeopardy, a result which is the very antithesis of the ERISA statutory scheme developed by Congress.

in Georgia state court to collect these money judgments by garnishing the debtors' plan benefits. The trial court granted the collection agency's request for garnishment.

The Georgia Court of Appeals reversed, holding that the Georgia statute exempting ERISA plans from garnishment precludes the garnishment of funds or benefits of ERISA-regulated employee benefit plans. *Mackey*, 486 U.S. at 825, 828. On appeal, the Georgia Supreme Court reversed. That court found that the statute in question barred the garnishment action, but held that such provision was preempted by ERISA because it purported to regulate ERISA plans. As a result of the Georgia Supreme Court's decision, ERISA plans became subject to garnishment under Georgia's general garnishment laws. On certiorari, this Court held that the state anti-garnishment law was preempted by ERISA. *Id.* at 830. The Court stated that the Georgia statute's express reference to ERISA and its sole application to employee benefit plans subjected it to preemption by the federal scheme. *Id.* at 829. The Court declared ". . . we hold that [the Georgia statute], *which singles out ERISA employee welfare benefit plans for different treatment under state garnishment procedures*, is preempted under § 514(a)." *Id.* at 830 (emphasis added).

The Court explained that this "different treatment" was apparent on the face of the Georgia statute by its express reference to ERISA plans. As a result of this provision, ERISA welfare benefit plans were protected from garnishment while non-ERISA plans were not so protected. *Id.* at 830 n.4.

The Court next considered whether § 514(a) preempts Georgia's general garnishment law because it "relates to" ERISA welfare benefit plans. The preemption argument was premised on the assertion that the Georgia garnishment law "relates to" ERISA welfare benefits plans because of the substantial administrative burdens and costs incurred by benefit plan trustees when they are forced to

respond to garnishment actions. *Id.* at 831. The Court rejected this argument and held that ERISA does not preclude the garnishment of ERISA-regulated welfare benefit plans pursuant to state judgment collection mechanisms. *Id.* at 841.

In reaching its decision, this Court analyzed the language and structure of the ERISA scheme and found that Congress did not intend to forbid the use of state-law mechanisms of executing judgments against ERISA welfare benefit plans. This conclusion was based on three factors: (1) ERISA § 502, which provides that ERISA plans may sue or be sued as an entity, clearly contemplates the enforcement of money judgments against benefit plans; (2) ERISA plans may be sued in "run-of-the-mill" state law contract or tort claims; and (3) ERISA provides no enforcement mechanism for collecting judgments in numbers 1 and 2 above. *Id.* at 832-33. Because ERISA contemplates the execution of such judgments against plans in civil actions without providing any collection mechanisms, this Court concluded that state law methods for collecting money judgment were not preempted. *Id.* at 834.

Finally, the Court addressed the seeming incongruity of upholding the statute permitting the garnishment of ERISA welfare benefit plans, while striking down the benefit plans. *Id.* at 838, n.12. The Court clarified this distinction by stating: ". . . *any* state law which singles out ERISA plans, by express reference, for special treatment is preempted. [citation] It is this 'singling out' that pre-empts the Georgia anti-garnishment exception." *Id.* (Emphasis in original).

The analysis in *Mackey* is instructive with respect to the issues in the present case. *Mackey* illustrates the manner in which the present case challenges the primary concerns of California's mechanics' lien law scheme. As we have seen, California Civil Code § 3110 is part of a broad framework of statutory protection designed to in-

sure that workers who contribute time, labor and materials to the improvement of real property obtain the wages and benefits to which they are entitled. Civil Code § 3111 provides the same mechanics' lien rights to employee benefit trusts as those provided to persons identified in § 3110. ERISA trust funds receive no greater benefit under this law than any other party entitled to invoke the mechanics' lien remedy. No "special treatment" of employee benefit plans arises as a result of § 3111. Section 3111 simply treats employee benefit plans in the same manner as any other mechanics' lien claimant. However, as a result of the California Supreme Court's decision, these benefits plans are singled out for special treatment which is not permitted under the rationale of *Mackey*.

By enacting § 3111, California legislators recognized the fundamental relationship between employee benefit trusts and their participant's total compensation package. In other words, § 3111 implicitly acknowledges that the function of ERISA trust funds is to safeguard in trust, that portion of a worker's compensation paid as fringe benefits, and to ensure the proper distribution of such benefits. Furthermore, it is well settled that fringe benefit claims are part of the employee's compensation, and must receive similar treatment. *United States v. Carter*, 353 U.S. 210 (1956). In sustaining a cause of action for fringe benefits against a payment bond surety, this Court stated that ". . . contributions were a part of the compensation for the work done . . ." and that the "trustees ". . . stand in the shoes of the employees and are entitled to enforce their rights." *Id.* at 217-18.

The majority opinion below held that Civil Code § 3111 is preempted because it "relates to" ERISA regulated employee benefit plans "by creating an additional funding mechanism for ERISA plans not provided for by Congress. . . ." *Carpenters Southern California Administrative Corporation v. El Capitan Development Company*, 53

Cal.3d 1041, 1051 (1991). As a result of this decision, ERISA trust funds, in their role as repository for the fringe benefit payments of their participants, are excluded from California's mechanics' lien collection mechanism. Therefore, § 3110 claimants are permitted access to mechanics' lien remedies while ERISA trust fund claimants are denied, making recovery of contributions owed less likely. This disparate treatment of ERISA regulated trust fund is illogical, discriminatory, and impermissible under this Court's precedents.

By precluding ERISA regulated trusts from utilizing mechanics' lien collection remedies, under this Court's holding in *Mackey*, the decision below constitutes an impermissible "singling-out" of ERISA employee benefit plans for different treatment under state mechanics' lien provisions. The actual effect of the California Supreme Court decision is to establish "different treatment" of ERISA employee benefit plans under state mechanics' lien provisions which is preempted under *Mackey*.

In *Mackey*, the "different treatment" arose as a result of the express provisions of the Georgia statute exempting ERISA benefit plans from the operation of the state's general garnishment laws. *Mackey* at 828-30. "Different treatment" there was further supported by the disparate treatment accorded to non-ERISA benefit plans as a result of the application of the garnishment exemption law. *Id.* at 830, n.4.

In the immediate case, by Civil Code § 3111, California sought to ensure that the portion of construction workers' compensation paid to employee benefit plans was protected to the same extent available to others under mechanics' lien remedies. In concluding that § 3111 is preempted by ERISA, the majority demonstrate a shallow comprehension of the relationship of employee benefit funds to labor policies and show a lack of understanding of the policy and purposes behind ERISA. For example, the majority's

rationale that ERISA plans do not furnish labor or materials to real property completely disregards the legal relationship between the ERISA plans and their participants, who do provide the labor.

The decision below asserts Civil Code § 3111 is preempted because it creates an additional cause of action for enforcing contribution obligations, as well as making additional entities liable for such amounts. *El Capitan*, at 1048. This rationale confuses the nature of the mechanics' lien remedy. Mechanics' liens do not create substantive personal rights against the owner of the real property. Such liens simply create a security interest in the property to which labor or services were contributed. Therefore, pursuant to § 3111, if appropriate payments are not made by the employer, a claimant may file a lien against the property and avail itself of the mechanics' lien remedy to collect an existing obligation. California Civil Code § 3110, *see, El Capitan*, at 1065 (Broussard, J., dissenting). This is precisely the enforcement tool provided to each individual construction laborer who performs work on a particular work of improvement. Civil Code § 3110. It is inaccurate to characterize such a collection mechanism as an additional substantive cause of action. Furthermore, the property owner should not be viewed as a stranger to this transaction, since its property has been enriched by the value of the labor provided.

ERISA § 514(a) preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by the statute. 29 U.S.C. § 1144(a). "The term 'State law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any state. . . ." ERISA § 514(c), 29 U.S.C. § 1144(c). "[W]e have *virtually taken it for granted that state laws which are specifically designed to affect employee benefit plans are pre-empted under § 514(a).*" *Mackey*, at 829 (emphasis added). Because the California Supreme Court's decision itself impermis-

sibly "singles-out" ERISA employee benefit plans for different treatment under California's state mechanics' lien provisions, the Trust Funds respectfully request this Court to grant certiorari and reverse.

II. THE CALIFORNIA SUPREME COURT ERRONEOUSLY APPLIED THE PRECEDENTS OF THIS COURT IN DETERMINING WHETHER CALIFORNIA CIVIL CODE § 3111 IS PREEMPTED BY ERISA.

"ERISA is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983). "The statute imposes participation, funding, and vesting requirements on pension plans. It also sets various uniform standards, including rules concerning reporting, disclosure, and fiduciary responsibility, for both pension and welfare plans." *Id.* at 91.

As part of this regulatory system, Congress sought to provide various safeguards to prevent abuse and "to completely secure the rights and expectations" created by ERISA. S.Rep. No. 93-127, p. 36 (1973). A crucial element among these safeguards is § 514(a), 29 U.S.C. § 1144(a), ERISA's broad preemption provision. *Ingersoll-Rand Co. v. McClendon*, 498 U.S. ——, 112 L.Ed.2d 474, 482-83 (1990). ERISA § 514(a) preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by the statute. 29 U.S.C. § 1144(a).

"A law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan." *Shaw, supra*, at 96-97. However, "[s]ome state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan." *Id.* at 100.

"[T]he question whether a certain state action is preempted by federal law is one of congressional intent.

'The purpose of Congress is the ultimate touchstone.'" *Ingersoll-Rand*, 112 L.Ed.2d at 483 (citing *Allis Chalmers Corp. v. Lueck*, 471 U.S. 202, 208 (1985)).

The preemptive power of § 514 is indeed broad. However, a reviewing court must provide more than lip service to sweeping statutory statements. A review of the Court's decisions in this area provides valuable guidelines for the instant case.

In *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1987), the Court considered whether a Maine law requiring severance payments to employees laid off as a result of a plant closing was preempted by ERISA. This Court held that this statute was not preempted since it neither established nor required an employer to maintain an employee benefit "plan" within the meaning of ERISA. *Id.* at 6. Since the statute dealt with employee "benefits", rather than "employee benefit *plans*," it was not preempted. *Id.* at 7-8.

The Court further explained that preemption of the statute did not serve ERISA's purposes since it did not raise concerns regarding the imposition of contradictory regulations on employee benefit plans by different jurisdictions, nor did it implicate regulatory concerns regarding the administration of such plans. *Id.* at 8, 14. The Court held that where a state law created no danger of a conflect with a Federal statute, there is no basis for preemption. *Id.* at 19.

In *Mackey v. Lanier Collections*, this Court rejected the preemption challenge to Georgia's general garnishment laws as applied to ERISA-regulated employee benefit plans. *Mackey*, 486 U.S. at 841. Based upon an analysis of the express language and structure of ERISA, this Court concluded that no Congressional intent existed to bar the state law collection methods there at issue. *Id.* at 834. Furthermore, the Court rejected petitioner's contentions that the administrative and economic impact of the state garnishment laws necessarily "related to"

ERISA welfare benefit plans so as to require preemption under § 514. *Id.* at 831.

In *Shaw v. Delta Airlines*, 463 U.S. 85 (1983), this Court considered ERISA preemption challenges to New York state human rights and disability benefit statutes. The New York human rights law prohibited discriminatory treatment by employee benefit plans for pregnant employees as compared to other non-occupational disabilities. The law at issue required employers to pay disability benefits to pregnant employees, therefore treating them in a similar manner as employees otherwise disabled. Striking down the state law, the Court held the provision preempted by ERISA but "only insofar as it prohibits practices that are lawful under federal law." *Id.* at 108. The Court explained that by this provision, New York prohibited discrimination involving employee benefit plans otherwise permitted by federal law (at that time). The New York state disability law was held not preempted by ERISA. *Id.* at 108.

In *Pilot Life Insurance Company v. Dedeaux*, 481 U.S. 41 (1987), this Court addressed a preemption challenge to a plan participant's state law action involving improper processing and bad-faith failure to pay benefits under an ERISA regulated insurance plan. Much of this decision involved an interpretation of the "deemer clause" of ERISA § 514(b)(2)(B). However, this Court held that ERISA's civil enforcement scheme preempts state-law actions asserting improper processing and payment of ERISA plan benefits.

In *FMC Corp. v. Holliday*, 498 U.S. ——, 112 L.Ed.2d 356, 111 S.Ct. —— (1990), this Court held that ERISA preempted a Pennsylvania state subrogation law which regulated employee benefit plans. This statute was preempted since it controlled the subrogation and reimbursement rights arising in state tort claims thereby directly regulating the funding and benefits of ERISA regulated employee benefit plans. *Id.* at 362-63.

In *Ingersoll-Rand v. McClendon*, 498 U.S. ——, 112 L.Ed.2d 474, 111 S.Ct. 478, this Court considered a preemption challenge to a state wrongful discharge action based on an employee's allegation that his employer terminated his position to avoid pension plan liability. The Texas Supreme Court upheld the employee's wrongful discharge action because it found that the principal reason for the termination was the employer's desire to evade its pension obligations. *Id.* 112 L.Ed.2d at 482. However, this Court reversed the decision of the Texas Court, holding that state laws which provide a remedy for the violation of rights expressly guaranteed by ERISA and exclusively enforced under its civil enforcement provisions are preempted. *Id.* at 488. The Court explained that the basis of the state causes of action focused on the very existence of the plan as well as the participant's rights therein. Because ERISA itself provides for the exclusive enforcement of such rights, the state law is preempted. *Id.* at 484, 486.

Based on these Supreme Court decisions, state laws are preempted pursuant to § 514(a) in the following circumstances: (1) where the law specifically targets employee benefit plans for special treatment, *Mackey*, (2) where the state law prohibits practices permitted under federal law, *Shaw*; (3) where the law provides a state remedy for actions related to claims processing and the distribution of benefits by employee benefit plans, *Pilot Life*; (4) where the law directly controls the subrogation and reimbursement rights of employee benefit plans thereby regulating the funding of such plans, *FMC*; (5) where the law provides a state remedy based on rights directly concerning the existence of the plan and the rights of its participants. *Ingersoll-Rand.*

Where preemption has been found, the state laws involved have directly affected aspects of the substantive legal relationships between employee benefit funds, their participants and employers. Rather than merely "relate

to" employee benefit plans, these state laws substantially impact employee benefit plans in crucial areas governed by ERISA including plan administration, funding, and the distribution of benefits.

In contrast, state laws have not been determined preempted by ERISA in the following circumstances: (1) laws affecting employee benefit plans in too tenuous or remote a manner upon which to warrant preemption, *Shaw*; (2) where the law provides ancillary collection remedies in civil cases against employee benefit plans, *Mackey*; (3) where the law creates no danger of conflict with ERISA purposes and policies, *Fort Halifax*.

Based upon these principles, California Civil Code § 3111, by its terms, does not fall into the category of state laws preempted § 514(a). As has been demonstrated, § 3111 seeks to treat employee benefit plans similarly to all other claimants under California's mechanics' lien remedies. Section 3111 has no impact on any phase of employee benefit plan administration which conflicts with ERISA's purposes or policies. Section 3111 raises no danger regarding the compliance by employer benefit funds with conflicting laws of various jurisdictions. Section 3111 has no impact on the terms and conditions of employee benefit plans, and it has no affect on funding, vesting, or benefit provisions established pursuant to ERISA.

As in the statute at issue in *Mackey*, § 3111 simply provides an alternate mechanism permitting employee benefit plans (like all mechanics' lien claimants) to collect previously existing obligations. Furthermore, as in *Mackey*, no basis exists which would support the argument that the area of collection procedures is exclusively enforced under ERISA.

III. THE CALIFORNIA SUPREME COURT'S HOLDING THAT CIVIL CODE § 3111 IS PREEMPTED BY ERISA IS INCONSISTENT WITH LEGISLATIVE INTENT.

As originally enacted, ERISA did not provide a federal cause of action for the recovery by employee benefit plans of unpaid contributions. *Mackey*, 486 U.S. at 832. Furthermore, ERISA § 502 provides that employee benefit plans may sue or be sued as an entity in § 502 actions. 29 U.S.C. § 1132(d)(1). ERISA plans may also be sued in state tort and contract actions. Despite these provisions, ERISA does not provide an enforcement mechanism for collecting judgments awarded in these types of actions. *Mackey*, at 833. Based on these provisions, this Court concluded that the collection of judgments pursuant to state law collection remedies was contemplated within the ERISA scheme in cases where an ERISA benefit plan is a party. *Mackey*, at 834.

This conclusion is supported by the legislative history of ERISA. In *Laborers Fringe Benefit Funds v. Northwest Concrete and Construction, Inc.*, 640 F.2d 1350, 1352 (6th Cir. 1981), the 6th Circuit declared:

> The legislative history underlying Section 502 indicates that Congress intended that the enforcement provisions should have teeth: the provisions should be liberally construed 'to provide both the Secretary and participants and beneficiaries with broad remedies for redressing or preventing violations of the Act.' H.Rep. No. 93-533, 93d Cong. & Ad. Newsp. 4639, 4655. This history further states that 'the intent of the Committee is to provide the full range of legal and equitable remedies available in *both state and federal courts* and to remove jurisdictional and procedural obstacles which in the past appear to have hampered effective enforcement of fiduciary responsibility under state law for recovery of benefits due to participants.' (Emphasis added).

Further evidence of a congressional intent not to preempt state collection remedies is found in the legislative history of the Multi-Employer Pension Plan Amendments Act of 1980, wherein, *inter alia*, Congress enacted ERISA § 1145 providing employee benefit trusts with a federal cause of action for unpaid contributions.

Pertinent provisions of this history provide:

> The Committee's amendment provides that in the case of a civil action by any person to collect delinquent multi-employer plan contributions, *regardless of otherwise applicable law*, the court before which the action is brought may award the plaintiff (1) reasonable attorneys' fees, (2) court costs and (3) liquidated damages not to exceed 20% of the amount of delinquent contributions as determined by the court. However, these items are to be awarded to a plaintiff only to the extent that the multi-employer plan in question provided for such an award. The bill preempts any state or other law which would prevent the award of reasonable attorneys' fees, court costs, or liquidated damages or which would limit liquidated damages to an amount below the 20% level. However, the bill does not preclude the award of liquidated damages in excess of the 20% level if an award of such higher level of liquidated damages is permitted under state or other law. *The Committee amendment does not change any other type of remedy permitted under state or federal law with respect to delinquent multi-employer contributions.* (Emphasis added).
>
> H.R. Rep. No. 96-869 (II), 96th Cong., 2d Sess.

Based on these excerpts of legislative history, it is apparent that utilization of state remedies for the collection of delinquent contributions by employee benefit plans was contemplated, indeed encouraged by Congress.

CONCLUSION

For the foregoing reasons, the Trust Funds respectfully urge this Court to issue a Writ of Certiorari.

Respectfully submitted,

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